

NEW APPLICATION

ORIGINAL
COMMISSIONERS



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Arizona Corporation Commission
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER

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BEFORE THE ARIZONA CORPORATION COMMISSION

W-02234A-13-0237

IN THE MATTER OF THE APPLICATION
OF H2O, INC. FOR APPROVAL OF SALE
OF ASSETS AND CONDITIONAL
CANCELLATION OF ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY

DOCKET NO. _____

**APPLICATION FOR APPROVAL
OF SALE OF ASSETS AND
CONDITIONAL CANCELLATION
OF CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Applicant H2O, Inc. ("H2O") hereby applies, pursuant to A.R.S. § 40-285(A), for a Commission Order approving the sale of its assets and operations to the Town of Queen Creek (the "Town"), an Arizona municipality, and the cancellation and extinguishment of its Certificate of Convenience and Necessity ("CC&N"), conditioned upon consummation of the sale of H2O to the Town.

I. Transaction Information

H2O is a public service corporation regulated by the Commission that holds a Certificate of Convenience and Necessity (first granted in Decision No. 43476, dated July 23, 1973) authorizing it to provide water utility service within the defined geographic area depicted on Exhibit "A" and more particularly described in Exhibit "B".¹ H2O's CC&N encompasses approximately 19 square miles. H2O currently provides service to 9,637

¹ Utilities Division Staff provided the map attached as Exhibit "A", while the legal description has been taken from the Decisions noted on Exhibit "B".

1 connections. H2O's water system is comprised of 15 wells currently capable of producing
2 approximately 7,540 gallons per minute, 13 storage tanks with a combined net capacity of
3 13,365,638 gallons and the related infrastructure needed to provide safe and reliable water
4 service to customers.

5 During the years leading up to this Application, the Town indicated that it intended to
6 acquire H2O and provide water service to the customers currently served by H2O. Under
7 threat of condemnation, H2O entered into negotiations with the Town for the sale of H2O to
8 the Town in 2012. The parties have now agreed to the terms and conditions under which the
9 Town will acquire the assets of H2O, including its right to provide water utility service to
10 customers residing within H2O's CC&N, resulting in the extinguishment of that CC&N.
11 After the acquisition, the Town will charge all customers the Town's currently existing
12 rates. The majority of H2O customers (those using between 7,500 and 10,000 gallons per
13 month) should see little change in the amount of their monthly bills. The Town will also
14 assume H2O's obligations with respect to outstanding mainline extension agreements and
15 customer security deposits.

16 The proposed acquisition was overwhelmingly approved by the Town's voters in a
17 special election held May 21, 2013 by a vote of 2,550 in favor and 379 against. The Town
18 Council unanimously approved the acquisition at its June 19, 2013 regular meeting.

19 H2O, as discussed in a meeting with the Utilities Division Staff, including Director
20 Steven Olea, plans to provide notice of this Application to its customers by a separate
21 mailing in early July as well as through publication in the East Valley Tribune.

22 The closing of the parties' transaction is conditioned upon receipt of a conditional
23 order from the Commission cancelling H2O's CC&N upon notice to the Commission of the
24 successful close of the parties' transaction. Entry of such an order is also necessary for the
25 Town to secure initial financing from the Water Infrastructure and Finance Authority of
26 Arizona. Upon receipt of the conditional order from the Commission, finalization of
27 financing arrangements by the Town, or the closing date agreed to between the Town and
28

1 H2O, whichever is later, the sale transaction will close and H2O will file a notice with the
2 Commission that the condition precedent to the cancellation of its CC&N has been satisfied.
3 At that juncture, the cancellation would become permanent and unconditional.

4 **II. Contact Information**

5 **A. Company Management**

6 H2O, Inc.
7 Attn: Brad Schnepf
Doug Odom
8 41502 North Schnepf Road
9 San Tan Valley, Arizona 85140
Queen Creek, Arizona 85242
10 480-491-6970

11 **B. Company's Attorneys**

12 Steven A. Hirsch
13 Stanley B. Lutz
Bryan Cave LLP
14 2 North Central Avenue, Suite 2200
Phoenix, Arizona 85004
15 602-364-7000

16 **C. Purchaser**

17 Town of Queen Creek
Attn: Patrick Flynn
18 22350 South Ellsworth Road
Queen Creek, Arizona 85242
19 480-358-3000

20 **D. Purchaser's Attorneys**

21 Fredda J. Bisman
22 James T. Braselton
Dickinson Wright Mariscal Weeks
23 2901 N. Central Avenue, Suite 200
Phoenix, Arizona 85012
24 602-285-5047

25 **III. The Public Interest**

26 In order to provide consistent service and rates to its citizens, and to consolidate the
27 H2O water system with the municipal system already operated by the Town, the Town
28

1 desires to become the sole water utility service provider within its municipal boundaries.
2 The Town will also provide wastewater service to much of that area, so the requested
3 cancellation will have the effect of combining water and wastewater service in one
4 municipal provider for many of the affected customers. H2O agrees with the Town that
5 such a course of action is in the public interest. In addition, the acquisition will provide the
6 Town with access to additional production facilities and allow for the interconnection of the
7 two water systems, resulting in greater reliability and capacity.

8 **IV. Satisfaction of Compliance Items**

9 In Decision No. 70207 (March 20, 2008), the Commission granted H2O an extension
10 of its CC&N to include approximately 320 acres of land owned by the Arizona State Land
11 Department located in Pinal County, including 212 acres that were to be sold for residential
12 development. That residential parcel is surrounded on all sides by property currently served
13 by H2O. The Commission further required H2O to file a copy of an Arizona Department of
14 Environmental Quality Approval to Construct ("ATC") the water plant facilities necessary
15 to serve the residential parcel, along with an Arizona Department of Water Resources
16 Certificate of Assured Water Supply ("CAWS") for the residential parcel, by March 20,
17 2011.

18 On March 18, 2011, H2O docketed the required ATC with the Commission and
19 requested an extension of time in which to file the required CAWS due to development
20 delay caused by the recent economic downturn. In Decision No. 72528 (August 17, 2011),
21 the Commission extended H2O's time to file the required CAWS through March 20, 2014.
22 The residential parcel is still owned by the State Land Department. No development plans
23 have yet been proposed for the residential parcel. As a result, no CAWS has been applied
24 for by an interested residential developer, and no CAWS has been issued for the residential
25 parcel. In these circumstances, the Commission should recognize that the condition
26 requiring H2O to file such a CAWS, while not due until next year, is moot given the Town's
27 commitment to provide service throughout H2O's existing CC&N. This pending
28

1 compliance item, which is impossible to perform due to no fault of H2O or the Town,
2 should not delay the Town's acquisition of H2O's water utility assets and operations.

3
4 **V. Requested Relief**

5 Given the overwhelming approval of the proposed transaction by the voters of the
6 Town of Queen Creek, the approval of the proposed transaction by the Town's Council, the
7 Town's willingness to continue to provide water utility service on a non-discriminatory
8 basis to the affected consumers and the separate submission of a stipulated Opinion and
9 Order by Staff and H2O, Inc., H2O, Inc. respectfully requests that:

10 1. The Commission place this Application on the Open Meeting Agenda at the
11 Commission's earliest convenience and treat that Open Meeting as the required publicly
12 noticed hearing pursuant to A.R.S. § 40-285(A);

13 2. Approve the cancellation and extinguishment of the Certificate of
14 Convenience and Necessity for H2O, Inc. depicted on Exhibit "A", conditioned upon close
15 of the transaction between the Town and H2O, Inc. and issue its Final Order to that effect;
16 and

17 3. Grant such further relief as may be appropriate in the circumstances.

18 DATED this 3rd day of July, 2013.

19 BRYAN CAVE LLP

20
21 By

 
22 Steven A. Hirsch, #006360

23 Stanley B. Lutz, #021195

24 Two N. Central Avenue, Suite 2200

25 Phoenix, AZ 85004-4406

26 Attorneys for H2O, Inc.
27
28

1 ORIGINAL and 13 copies of the foregoing
2 filed this 3rd day of July, 2013, with:

3 Docket Control Division
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7 COPIES of the foregoing hand-delivered
8 this 3rd day of July, 2013, to:

9 Lyn A. Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 Janice Alward, Chief Counsel
16 Legal Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 Steven M. Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
23 1200 W. Washington Street
24 Phoenix, AZ 85007

25 Copy sent by regular mail this
26 3rd day of July, 2013 to:

27 Fredda J. Bisman, Esq.
28 James T. Braselton, Esq.
Dickinson Wright Mariscal Weeks
2901 N. Central Avenue, Suite 200
Phoenix, Arizona 85012
Attorneys for Town of Queen Creek

Lisa Remus

EXHIBIT A

02S07E						02S08E					
06	05	04	03	02	01	06	05	04	03	02	01
			GERMANN				GERMANN				
07	08	09	10	11	12	07	08	09	10	11	12
			ELLSWORTH	QUEEN CREEK			IRONWOOD				
18	17	16	15	14	13	18	17	16	15	14	13
			RITTENHOUSE	CRISMON	SIGNAL BUTTE		OCOTILLO				
19	20	21	22	23	24	19	20	21	22	23	24
			CHANDLER HEIGHTS				GANTZEL				
30	29	28	27	26	25	30	29	28	27	26	25
			RIGGS	CLOUD	RIGGS		COMBS				
31	32	33	34	35	36	31	32	33	34	35	36
			HAWES	CRISMON	SIGNAL BUTTE		HASH KNIFE DRAW				
						06	05	04	03	02	01
						03S08E					
						07	08	09	10	11	12
									SKYLINE		

EXHIBIT B

LEGAL DESCRIPTION

Decision No. 43476 (7/23/1973)	Decision No. 43987 (3/15/1974)	Decision No. 55738 (9/23/1987)	Decision No. 63960 (9/4/2001) as amended by 64062 (10/4/2001)	Decision No. 70207 (3/20/2008)
Section 8, East ½ of Section 9, all of Sections 16, 17, 21 and 22 of Township 2 South, Range 8 East, Gila and Salt River Base and Meridian ("G.&S.R.M.").	The North one half (N ½) of Section 26 and the North one half (N ½) of the North one half (N ½) of Section 25, Township 2 South, Range 7 East, G.&S.R.M., Maricopa County, Arizona and Section 30 and Section 32 of Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona.	Section 24 except the North ½ of the NE ¼ of Section 24, Township 2 South, Range 7 East, G.&S.R.M.	<u>Johnson Farms (160 Acres)</u> All of Section 32, Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona And The Northwest quarter of Section 5, Township 3 South, Range 8 East, G.& S.R.M., Pinal County, Arizona	The West one-half of Section 9, Township 2 South, Range 8 East of the G.&S.R.M., Pinal County, Arizona.
East ½ of Section 9 and all of Section 16, Township 2 South, Range 8 East, G.&S.R.M.			<u>Pecan Ranch/Ralph Thomas (640 Acres)</u> All of Section 29, Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona	
Sections 7, 18, 19 and 20 of Township 2 South, Range 8 East, G.&S.R.M.			<u>Home Place (640 Acres)</u> All of Section 28, Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona	
North half of the Northeast quarter of Section 24 Township 2 South, Range 7 East, G.&S.R.M.			<u>Ware Farms (480 Acres)</u> South half and Northwest quarter of Section 33, Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona	

LEGAL DESCRIPTION
(continued)

			<p><u>Various (160 Acres)</u> Northeast quarter of Section 33, Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona</p>	
			<p><u>El Dorado Holdings</u> <u>(485 Acres)</u> That portion of the East half of Section 31 lying North and East of the Southern Pacific Railroad right-of-way, and that portion of the Northwest quarter of Section 31 lying North and East of the Southern Pacific Railroad right-of- way, both in Township 2 South, Range 8 East, G.&S.R.M., Pinal County, Arizona, And That portion of Section 6 lying North and East of the Southern Pacific Railroad right-of-way, Township 3 South, Range 8 East, G.&S.R.M., Pinal County, Arizona</p>	
			<p><u>(640 Acres)</u> All of Section 13, Township 2 South, Range 7 East, G.&S.R.M., Maricopa County, Arizona</p>	